PROTECTION OF OFFICIAL DATA: ARE THE OFFICIAL SECRETS ACTS FIT FOR PURPOSE WITHIN TWENTY-FIRST CENTURY MODERN BRITAIN

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"The British spy community is the least accountable and most legally protected in any western notional democracy"

--Annie Machon[1]

[1] Annie Machon is a former intelligence officer for MI5, the UK Security Service, who resigned in the late 1990s to help blow the whistle on what she describes as incompetence and crimes up to and including murder.

DECLARATION

This dissertation is the result of my own investigations, except where otherwise stated. Where correction services have been used, the extent and nature of the correction is clearly marked within the footnote(s). Other sources are acknowledged by footnote(s) giving explicit references. A bibliography is appended.

In accordance with the School of Law guidelines, this dissertation does not exceed 10,000 words.

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ABSTRACT

The protection of official data plays a fundamental role in modern society. Governments across the globe must at the very least, attempt to keep their state secrets, well just that, secret. How nations do this differs somewhat, however for the purposes of this dissertation one focuses on the legislation and case law relating to that of the United Kingdom. The law relating to official secrecy is an increasingly important area for the modern lawyer, in that capabilities in technology and the ease at which one could make an unauthorised disclosure can somewhat be underestimated. Furthermore, it is mooted that with the government intending to restructure the law in this area, it likely won't be long before someone is needed to test out such new measures.

This dissertation focuses on key areas of law and policy relating to official secrecy which one submits in some cases has been neglected to be considered within the academic literature, which is quite concerning considering the implications for the British people in terms of how the law relating to official secrecy can at best be misunderstood, and at worst be misused at the whim of the Attorney General and/or the government of the day he or she represents in an attempt to avoid politically embarrasing disclosures.

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CONTENTS

1. **INTRODUCTION** **1**
2. **THE LAW** **5**
3. **THE PROBLEM** **13**
4. **THE MEDIA PERSPECTIVE** **21**
5. **THE CASE FOR REFORM** **27**
6. **CONCLUSION** **34**
7. **BIBLIOGRAPHY** **35**
8. **APPENDICES** **40**

LIST OF APPENDICES

APPENDIX 1 OFFICIAL SECRETS ACT DECLARATION (1987) 41

APPENDIX 2 OFFICIAL SECRETS ACT DECLARATION (2020) 42

APPENDIX 3 'COLLATERAL MURDER' TRANSCRIPT 45

1. INTRODUCTION

The law and policy relating to official secrecy within the United Kingdom is complex and often seen as controversial. Recently, there has been a renewed interest in this area, which one suggests is likely due to the recent publication of the Law Commission Report[2] which is extensive, albeit as will be motioned later within this dissertation, has overlooked some key aspects and valid concerns from various media, public and charitable organisations. The Official Secrets Acts[3] have held a prominent place on the statute books ever since 1889, when the first Official Secrets Act[4] was passed after very little debate. The role in which official secrecy plays in British society goes back to the times of the Tudors and Stuarts and has been suggested by many as some type of obsession of the British establishment for centuries[5].

One major theoretical issue that has dominated the field for many years concerns the lack of a 'public interest' defence concerning unauthorised disclosures of official

[2] Law Commission, 'Protection of Official Data Report: Law Com No 395' (2020).

[3] Official Secrets Acts 1889-1989.

[4] Official Secrets Act 1889.

[5] Alan Marshall, 'Britain's Obsession with Secrecy Goes Back to The Tudors And Stuarts – And Is Still at Work Today' The Conversation (2016).

information which would safeguard those who make disclosures in the public interest. Despite the UK government facing embarrassment in the courts frequently, they appear to have somewhat neglected what could be described as their duty to the British people in ensuring the law is fair and justiciable. As will be described later within this dissertation the role a 'public interest' defence could and should play is a controversial one, and not everyone within the academic, legal and governmental community agree on the best way forward.

This dissertation aims to critically analyse the law, policy and political influence of official secrecy in twenty-first century modern Britain. It will also offer a critical alternative view by discussing and considering the competing interests of openness vs secrecy. While much of the academic literature in this area focuses on case law and the law in general, one respectfully moots that is fails to offer an independent, reasoned viewpoint, request even, on what could be described as some of the grave failures and in some cases serious illegality which has been suggested to have been committed by the British government and/or their representatives on a systematic basis. These exact points will be considered and analysed in an attempt to ascertain why when focusing on official secrecy, do we fail to consider the actual disclosures themselves, how they relate to changing societal attitudes and consider the reasons why the current legislation may or may not be fit for purpose.

One suggests that the significance and value that this dissertation can offer at the very least, is an honest and succinct account, unfortunately, often, of the failings which the Act has tried and fortunately failed to prevent in relation to what one suggests as political embarrassing disclosures which one strongly suggests could and should be deemed in the public interest. While one agrees and accepts it's not for Jo Public to make such a decision, the clear incompetence and what can only be described as whitewash from the UK government can only be considered as perverse in nature and in total contrast to that of the sound administration of justice, rule of law and doctrine of equity.

Chapter 2 will analyse the law relating to official secrecy in the United Kingdom, that being the primary legislation in this area which is that of the Official Secrets Acts 1889-1989[6]. It will also consider the provisions of secondary legislation in the form of statutory instruments, The Security Service Act 1989[7] and other associated legislation. Throughout it will critically evaluate the law and consider relevant case law where necessary to evidence its application and/or implications.

Chapter 3 provides further definitions, principles and attempts to define problems that have been illustrated through the use of relevant case law and also consider the academic literature on the subject area of official secrecy and also the explosive and formidable recommendations made in recent months by the Intelligence and Security Committee, also often referred to in the academic literature as 'The Russia Report'.

Chapter 4 considers the media perspective, looking at the competing interests of openness vs secrecy and how often in cases concerning official secrecy there can be a somewhat difficult balancing exercise which needs to take place. However, this chapter in particular aims to offer a succinct, honest, open and independent account of the failures that have been exposed where official secrecy legislation has proved relevant in that one argues, so far there is nothing to suggest that these areas have been considered in any great detail in more recent years and the importance of such revelations cannot be underestimated. Furthermore, it will consider the implications for a free press.

Chapter 5 outlines the many calls for reform, firstly by considering the recommendations which the Franks Committee made concerning s2 of the Official Secrets Act in September 1972, the recent extensive Law Commission Paper which made 33 recommendations in an attempt to reform the law. Finally, it will consider the

[6] Official Secrets Acts 1889-1989.

[7] Security Service Act 1989.

comments made by HM Queen Elizabeth II in her recent Queen Speech where she referred to reform of the law relating to official secrecy.

2. THE LAW

The Official Secrets Acts[8] have a long-standing history on the statute books, which one suggests in recent years has caused some considerable controversy and debate. The first Official Secrets Act was introduced in 1889[9] as a statutory measure to prevent espionage and prevent the wrongful disclosure of official information. It is however suggested by Hooper[10] that the real reason for the introduction of such a law was due to two incidents which had happened in 1887 whereby *"the text of the instructions to the intelligence department of the Royal Navy was published in the press"* and also whereby a dockyard draughtsman had likely sold plans and tracings of a warship to the French which was considered a grave breach of trust by the then British government. This is where the law of official secrecy therefore begins. *s1* of the 1889 Act[11] refers to disclosure of information, s2 breach of official trust and s3 making it an offence to incite or counsel another to commit such an offence. s6 relates to the extent and place of trial of the offence in which it makes it an offence for any British subject or officer whether at home or in any part of Her Majesty's dominions to spy or leak official information. However, what's interesting is that the Act did not extend to those who were not British officers or subjects in another country, for instance the USA or Germany. A peculiar safeguard was added into the legislation in the form of s7 which affirms that a prosecution cannot take place without the consent of the Attorney General (Lord Advocate in the case of Scotland or Ireland). It's also worthy to note that s2(1) of the Act provided for a 'public interest' defence whereby it goes on to say

[8] Official Secrets Acts 1889-1989.

[9] Official Secrets Act 1889.

[10] David Hooper, Official Secrets: The Use and Abuse of The Act (Secker & Warburg 1987).

[11] Official Secrets Act 1889.

> *"Where a person, by means of his holding or having held an office under Her Majesty the Queen, has lawfully or unlawfully either obtained possession or of control over any document, sketch, plan, or model, or acquired any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document, sketch, plan, model, or information to any person to whom the same ought not, in the interest of the State, or otherwise in the public interest, to be communicated at that time, he shall be guilty of a breach of official trust."*

It wasn't long before the 1889 Act[12] started to show cracks and then came the Official Secrets Bill 1991[13]. The bill was deemed a success by the then liberal government, and once passed, again after very little debate, in which the then Cabinet Secretary for War passed the Act off nothing more than a set of precautions which were needed as a matter of national security, when what it did in fact do was tighten up the restrictions and completely remove all traces of the 'public interest' defence. This was formed as the Official Secrets Act 1911[14] which received Royal Assent on the 22nd day of August 1911 after passing it's second and third reading in just one afternoon[15].

The Official Secrets Act 1911[16] is arranged into 13 sections and is an Act which was intended to re-enact the Official Secrets Act 1889[17] with Amendments, ultimately

[12] Official Secrets Act 1889.

[13] Official Secrets Bill 1911.

[14] Official Secrets Act 1911.

[15] Hansard 18th August 1911.

[16] Official Secrets Bill 1911.

[17] Official Secrets Act 1889.

repealing the 1889 Act[18]. s1 relates to espionage also referred to in the academic literature and more commonly known as spying[19]. As we can see the wording has now changed somewhat to the earlier 1889 Act[20] in that s1(1) states

> *"if any person for any purpose prejudicial to the safety or interests of the state either a) approaches or is even in the neighbourhood of and/or enters any prohibited place; b) makes any sketch, plan, model or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy and/or c) obtains and/or communicates to any person any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy"*

will be guilty of an offence and shall be liable upon conviction to penal servitude (custody) to between three and seven years. This was later amended in 1920[21] however it's important to note the seriousness of the possible sanctions for spying, and the fact that anyone the government of the day deem behaving in a way they could moot as against the interests of the state, therefore becoming liable in law for a breach of official secrecy. The Act says so, it confirms *any person, for any purpose*. This one suggests, is not proportionate and further evidence that the British were worried about the possibility of spying around the period of its enactment. The Act doesn't stop there, it goes further whereby *s(1)(2)* affirms that a prosecution under this section, that being a prosecution relating to spying, it shall not be necessary to show that the accused person is guilty of any particular act tending to show a purpose prejudicial to the safety or

[18] Official Secrets Act 1889.

[19] 'Spying' is referred to in the Cambridge Dictionary as "to secretly collect and report information about the activities of another country or organisation"

[20] Official Secrets Act 1889.

[21] Official Secrets Act 1920.

interests of the State, notwithstanding that no such is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his or her purpose was a purpose prejudicial to the safety or interests of the State. This one argues is pretty draconian and in theory permits the Attorney General and/or those who he is acting for i.e. the government of the day to charge anyone for any purpose that was considered against their interests or safety (in that they are the State for the purposes of the Act) and should a defendant be unfortunate enough to be in the vicinity of any government building, even approaching it could be found guilty of a felony. Imagine then, adding a previous conviction for theft, would that automatically mean that their character is impaired for the purposes of the Act and therefore they must be found guilty. This in one's submission seriously impacts upon the basic principles of the criminal law, that being an accused is innocent until proven guilty. This Act in theory could put some unfortunate defendant in the place of being found guilty by the Act before they had even a chance to consider and/or state their defence. While one recognises the importance of ensuring that one's country can take a clear stance concerning traitors and/or spying, it's unconscionable that the lawmakers of the day did not see the seriousness of passing such legislation. A relevant case which fell under the scope of *s1* of the Act was that in Chandler v D.P.P [1964][22] whereby six protesters were arrested and subsequently found guilty of conspiracy to commit and incite others to committing a breach of *s1* of the Official Secrets Act 1911.[23] They intended to *"prevent a nuclear war"*. They planned to immobilise a Royal Air Force base and had produced leaflets to that effect. They desired to prevent aircraft from leaving the base and an attempt to make the public aware of their cause. The case was appealed in that they felt their purpose was in fact for the interests of the State, which was contrary to what the Act required, that being any purpose prejudicial to the safety or interests of the State. The House of Lords however disagreed and held the appeal should be dismissed in that if a person enters a prohibited place to cause obstruction and/or interference which is prejudicial to the defence dispositions of the

[22] Chandler v DPP [1964].

[23] Official Secrets Act 1911.

State, an offence is therefore committed, and his ultimate objects are irrelevant. This section of the Act is still in force today despite some minor amendments in the form of those words inserted by Schedule 1 and 2 of the Official Secrets Act 1920.[24]

We now turn to *s2* of the Official Secrets Act 1911[25] which is related to the wrongful communication of information. This section has now been repealed by the 1989 Act[26] however for the purposes of this dissertation, one feels it important to reference such provisions. *s2(1)* made it an offence for any person to have in his possession and/or control, or to communicate *s2(1)(a)* and/or retain *s2(1)(b)* any sketch, plan, model, article, note, document, or information which related to or was used in a prohibited place; or which had been provided to him as part of a contract and/or agreement and/or been notified that they were subject to such provisions as set out in the Act and subsequently made a wrongful disclosure. The committing of an offence contrary to *s2* of the Act was punishable by a period of up to two years, a fine and/or both. The construction of *s2(1)(b)* can be outlined in the case of R v Simington [1921][27] whereby the appellant submitted an appeal against his conviction and sentence. He was accused of retaining records which he obtained in the line of his work as an employee of the Office of Works. The courts held that the clause which shown the wording "*which relates to or is used in a prohibited place or anything in such a place*" did in fact belong to the first of the two provisions of the clause only, therefore establishing the principle that if a person for the purposes of the Act had in his possession any sketch, plan, model, article, note, document, or other information in which he had obtained as part of his or her holding office under His or Her Majesty, or was employed by someone who represented such retain thereafter such sketch, plan, model, article, note, document, or other information when they had no right to do so – therefore not being given permission, he or she would therefore be guilty of an offence, regardless of the fact that

[24] Official Secrets Act 1920.

[25] Official Secrets Act 1911.

[26] Official Secrets Act 1989.

[27] R v Simington [1921] 1 KB 451; 15 Cr App R 97.

such sketch, plan, model, article, note, document, or other information did not relate to a prohibited place.

The Official Secrets Act 1920[28] provided some minor, albeit interesting amendments to the 1911 Act. s1 introduced an array of possibilities in which it would become an offence if any person for the unauthorised purposes of admission or assisting another to gain admission to a prohibited place occurred. S1 was thorough in its approach in that it provided for personation and false documents, going into much detail about the types of conduct it deemed prejudicial to the interests of the State. The use of uniforms, forged documents, and what can more easily be described as typical spy activity of the time.

The Official Secrets Act 1939[29] amended s6 of the 1920 Act.[30] In particular s1(1) added a requirement for the consent of the secretary of state should a chief officer of police be satisfied that a possible offence was or was about to be committed and they wished to compel an individual to furnish such information for the purposes of the Act. This one respectfully suggests could have been that the Government realised that not all members of HM Constabulary were in fact *bona fide* and maybe infiltrated by rogue players so the speak. It was likely preferable that if the police could at least furnish the Secretary of State with details of an alleged offender, they themselves could ensure it wasn't someone they, in fact, were already aware of in case the information the police were about to obtain was too classified for even them to have knowledge of. Furthermore, s1(2) bizarrely goes on to avow

> *"Where a chief officer of police has reasonable grounds to believe that the case is one of great emergency and that on the interest of the State*

[28] Official Secrets Act 1920.

[29] Official Secrets Act 1939.

[30] Official Secrets Act 1920.

> *immediate action is necessary, he may exercise the powers of the foregoing subsection without applying for or being granted the permission of a Secretary of State, but if he does so shall forthwith report the circumstances to the Secretary of State".*

This appears somewhat as a procedural safeguard for times of national emergency or the like, however, it's important to point out that the draftsmen failed to define the terms "great emergency" or "forthwith" for the purposes of the Act which is poor concerning the nature of the Act and in that the terminology is open to interpretation to the lay reader and could in theory permit abuse. To date, however, this does not appear to have created a problem in that there is nothing to suggest any case law and/or questions have been raised in either of the Houses on such matters.

Finally, we consider The Official Secrets Act 1989[31] which received Royal Assent on the 11th day of May 1989, coming into force just under a year later on the 1st day of March 1990. The Act replaced *s2* of the Official Secrets Act 1911[32] by protecting a more limited class of official information. It is suggested by some that the enactment of the Security Services Act[33] of the same year was no coincidence and is inferred that the two work in tandem.[34] It's also worthy to note that the Security Services Act was the first statute to ever put the security services on a statutory footing, therefore, supposedly enforcing accountability. *s1(1)* of the Act confirms that a person who is or has been

a) a member of the security and intelligence services; or
b) a person who has been notified that he or she is subject to the provisions

[31] Official Secrets Act 1989.

[32] Official Secrets Act 1911.

[33] Security Service Act 1989.

[34] Rosamund M Thomas, Espionage And Secrecy (2nd edn, Routledge 2016).

will be guilty of an offence if without lawful authority he or she discloses any information document or other article relating to security or intelligence which is or has been in his or her possession by virtue of his or her position as a member of any of those services or in the course of his or her work while the notification is or was in force. s1(3) confirms that any person who is or has been previously a crown servant and/or government contractor for the purposes of the Act will be found guilty if he or she without lawful authority makes a damaging disclosure. s1(4) confirms that a disclosure for the purposes of the Act is damaging if it

a) causes damage to the work and/or any part of the security and intelligence services;
b) is of an instrument which is such that its unauthorised disclosure would or could cause damage and/or falls within a class of category which would be likely to have such an effect.

s1(5) of the Act permits a defence if a person charged with such an offence in accordance with this section is able to prove that he or she did not know, had no reason to know or that such an instrument related to security and intelligence matters. Furthermore, in relation to subsection 3 it permits a defence if the person accused did not know that making such a disclosure within the meaning of the Act would or could cause damage. s1(6) of the Act makes it obligatory for a notice to be in writing in order for it to be recognised as such for the purposes of subsection 1 and served upon the recipient by a Minister of the Crown[35]. s2 of the Act relates to defence and s3 international relations which are near symmetrical in terms of its requirements.

[35] An example of the current written notification used in government business for the purposes of the Official Secrets Act 1989, please see Appendix 2.

3. THE PROBLEM

This chapter of the dissertation will consider notable cases which have involved the use of the Official Secrets Acts[36] in an attempt to evaluate the problems with the current law. It will also critically evaluate the academic literature, where available in an attempt, ultimately to establish whether the current law is fit for purpose. It will also illustrate the recent developments and capabilities in technology which has enabled in one's view hostile state actors to be able to more easily cause serious and irreparable harm in a matter of seconds, which is of course a very much different situation to what the Acts themselves were looking to protect when enacted many years ago. Before moving onto the issues and problems which have arisen through the case law, it's necessary to consider what actually is official data and why does it need to be protected. One offers the interpretation that data as we know it has changed over the years. This is evidenced in the Official Secrecy legislation itself. In the 1911 Act the lawmakers refer to data as a sketch, plan, model, note or document. In the 1920 Act it somewhat elaborates further and adds categories of data such as that of passport, official pass, password, codeword, die, seal, and stamp. Then in 1989 the terminology becomes more familiar whereby it makes reference to terms such as information, document and article. The important point is this, it causes problems for the people who need to understand and interpret it. Understandably, terminology changes over time and as information technology has developed, more so in recent years so does what we deem data and therefore as years pass by more and more categories of data will need to be protected, which is where the law currently fails and has done for many years.

[36] Official Secrets Acts 1889-1989.

One of the most recent cases involving that of s1 of the 1911 Act[37] was that of Attorney General v Blake [1998][38] in which the then Attorney General was seeking action against Blake, who was a former member of the security and intelligence services (SIS). The Attorney General wished to prevent Blake from receiving financial benefit from the publication of his recent autobiography in which he refers to his conviction of unlawfully communicating information to the then Soviet Union in breach of s1(1) of the 1911 Act whereby he was sentenced to 42 years imprisonment in 1961, however managed to escape in 1966. This was a very interesting case, and in law created a legal first, in that not only was the Attorney General seeking a remedy at public law but also as a matter of private law in that he alleged that Blake was in breach of his fiduciary duty as an ex servant of the Crown and by being so, agreed not to profit from his former status nor to use Crown property for his own personal use and/or gain. The Court of Appeal granted the injunction preventing Blake from making profit from the manuscript, however affirmed Blake was not in breach of any fiduciary duty in that the crown had suffered no loss and no claim for damages was made for breach of contract. It held however, that in an attempt to maintain public policy of ensuring that those with criminal antecedents could not profit from such activities and therefore the claim on public law succeeded. This case was appealed and heard in the House of Lords[39] whereby they dismissed the appeal and allowed the cross appeal in that they felt in the most exceptional of cases, whereby the usual remedies were inadequate to compensate such a breach of contract, it could be open to the courts to grant and order that such a defendant accounts for all such profits, either already received or to what he still yet awaits i.e. is entitled to. The Lords even went as far as to say that the publication in itself, constituted a fresh breach of the 1911 Act. Unsurprisingly, Blake submitted his case to the European Court of Human Rights (ECHR) in which he complained that the proceedings brought against him more recently, were incompatible with his right to have proceedings brought and concluded in accordance with the ECHR reasonable time

[37] Official Secrets Act 1911.

[38] Attorney General v Blake [1998] Ch 439.

[39] Attorney General v Blake [2001] 1 AC 268.

requirement. The court agreed and upheld Blake's complaint stating, "*while the proceedings were complex, they were neither factually nor administratively difficult*". Furthermore, the state was also unable to account for periods of inactivity and in that the state was responsible for the efficient administration of justice the court held it was therefore responsible for complying with such a reasonable time requirement. In the ECHR's view the proceedings had not been heard in accordance with the strict requirements as laid out in Article 6(1) of the European Convention on Human Rights.

As already indicated earlier within this dissertation, while s2 of the 1911 Act is no longer in force, its principles, and one suggests scars will not easily be forgotten in relation to the history and development of the law in this area. The case of R v Ponting [1985][40] is one any national security lawyer is likely to be aware of. Ponting was charged with an offence contrary to s2(1) of the Official Secrets Act 1911[41]. As the head of a department within the Ministry of Defence, Ponting had access to confidential papers relating to matters of national security. As part of his role he was required to compile a series of letters and notes on behalf of Mr Heseltine, the then Secretary of State for Defence under the Thatcher government which related to the controversial Belgrano affair[42]. Ponting was concerned about the nature and what he deemed as clear misinformation being fed through to Parliament in relation to the rules of engagement – a military matter and some of the documents which were deemed classified and marked TOP SECRET as well as CONFIDENTIAL in accordance with the now outdated Government Security Classifications Policy. Ponting disclosed some of the documents which evidenced the truth behind what was happening to a Member of Parliament and, in turn, to the press who published the documents. Subsequently Ponting was found guilty in the Central Criminal Court in which McCowan J held that a) whether or not a document touches on issues of national security is irrelevant and b) the only mens rea

[40] R v Ponting [1985] 2 WLUK 98.

[41] Official Secrets Act 1911.

[42] Clive Ponting, The Right To Know: The Inside Story Of The Belgrano Affair (Sphere Books Ltd 1985).

required was an intention to commit the actus reus. Furthermore, this case reinforced that no public interest defence exists in the 1911 Act as the prosecution did not need to show that Ponting was acting reasonably and honestly in the interests of the State – it was in all certain purposes irrelevant. This case also confirmed the terminology of "interests of the state" which the judge went on to say in obiter "*In the interests of the State meant in the interests of the state according to its recognised organs of government and the policies as expounded by the particular Government of the day.*" The Ponting case was widely published, and a mass campaign erupted as part of his trial in that he genuinely felt that the public had the right to know what was happening in the name of the British people. The jury, commendably acquitted Ponting. More famously, The Times reported on a witness which was heard in camera relating to 'crown jewels' which was deemed relevant to the case[43]. This evidence was provided by a Mr Richard Mottram, the then private secretary to Mr Heseltine. Thomas in her article considers s2 in which she goes on to suggest

> *"another solution is to ensure that the Official Secrets Acts are understood better by both Crown servants and the public; for example, the reasons for having such offences, what is involved, and why, Section 2 is criticised mainly for its "catch all" character and some ambiguity.*[44]*"*

The case of R v Shayler [2001][45] is another notable case in which relates specifically to s1 and s4 of the Official Secrets Act 1989.[46] Shayler was a former employee of the Security Services in which he made serious allegations of wrongdoing and illegality within MI5. It's a well reported case and prior to Shayler's initial conviction and

[43] The Times, 'The Ponting Belgrano Affair'.

[44] Rosamund M. Thomas, 'The British Official Secrets Acts 1911-1939 And the Ponting Case' (1986) Aug Criminal Law Review.

[45] R v Shayler [2001] EWCA Crim 1977.

[46] Official Secrets Act 1989.

ultimate incarceration, he and his then partner Annie Machon who is mentioned later within this dissertation had to go on the run for many months and seek refuge in France. Shayler eventually handed himself in which resulted in the reporting of this case. Shayler felt that he was entitled to rely on the defence of duress or necessity of circumstances in that his disclosures were in an attempt to save life and limb and uncover pervasive criminality, therefore could also rely on his right to freedom of expression offered to him in accordance with the Human Rights Act 1998[47] (HRA 1998). Lord Woolf LCJ dismissed the appeal affirming that while the defence of necessity was available under the 1989 Act Shayler in their view could not rely on the defence as he was unable to evidence any external factors which supported his case that being, a threat to life and limb of the general public. It was further suggested that the blanket ban on freedom of expression afforded to him under the HRA 1998 was not disproportionate or unjustified in that the need to protect the interests if the state i.e. national security prevailed. Shayler then took his case to the House of Lords[48] as he wished them to consider whether the lower courts were correct in saying he had no right to recourse of a public interest defence and if not; then could he rely upon his Human Right to freedom of expression. The Lords dismissed his appeal based on three key points, that being

1) the original judge had erred in even considering the issue of necessity or duress of circumstances in that the restrictions placed upon the courts in accordance with s31(3)(b) of the Criminal Procedure and Investigations Act 1996[49] only permitted them to discuss matters of law "relating to the case" and not that which it had engaged in.
2) allowing for entirety of the Act and bestowing s1(1)(a), s4(1)(a) and s4(3)(a) of their natural and ordinary meaning it did not convey such an obligation on the prosecution to evidence it was not in the public interest to make such a

[47] Human Rights Act 1998.

[48] R v Shayler [2002] UKHL 11.

[49] Criminal Procedure and Investigations Act 1996.

disclosure. Nor does the 1989 Act provide for a defendant the opportunity to show that his or her disclosure was in the public interest, and;

3) They did not accept that the 1989 provided an absolute ban on the freedom of expression in that the Act did allow for a disclosure to be made, but in an authorised manner. It did not therefore make a disclosure permitted because such authorisation was not awarded. The Lords indicated that there was recourse to a member of the security and intelligence services to seek judicial review should they not be happy with a decision made or felt their concerns were being ignored.

A more recent interesting and problematic case in which one proposes exposed serious flaws in the more recent 1989 legislation[50] was that of Katharine Gun. Gun worked for GCHQ in which she was employed to listen in to the communications of British interest in an attempt to prevent terrorism and the like, ultimately, protecting the states interests. While at work on day, she was copied into an email memo which was circulated from the US National Security Authority in which it requested her team (with authorisation from her British superiors) to actively listen to and seek information of UN National Security Council Members who were due to vote on a key issue relating to whether they would support, therefore approve military action in Iraq. The Observer published this memo and Gun eventually after handing herself in while at work was subsequently, albeit after much delay charged in accordance with s1(1) of the Official Secrets Act 1989.[51] Her story is one of truly shocking behaviour from the security services. While up until the point of the disclosure, Katharine was of good character, her husband was persecuted, simply for being a Turkish Muslim and her access to legal advice seriously impeded upon until the Judge gave permission for Katharine to speak properly with her legal advisors. It was nothing short of cruel, however offers an insight into how grave and serious the British establishment take disclosing their sometimes most precious secrets. This was another case in which it could be argued was simply politically

[50] Official Secrets Act 1989.

[51] Official Secrets Act 1989.

motivated and embarrassing for the British. What was to come however was even more embarrassing. When Katharine attended the Central Criminal Court to enter her plea of Not Guilty, the CPS decided to produce no further evidence. The transcripts from the court hearing itself confirm the judge appeared highly agitated at that fact, when Katharine had already confessed. Katharine's defence team planned to plead necessity in that she made the disclosure in an attempt to save lives. After all, why would the US and UK governments need to conspire and spy on their supposed partners to rig a vote at the UN council if they were so confident in the evidence they possessed which they alleged could show Iraq had access to weapons of what they deemed 'mass destruction'. The CPS were already aware that Katharine's defence team were to request copies of the Attorney General's advice prior to the agreement to go to war in that they believed it would show that the advice was in fact only a day before that to go to war with Iraq would be illegal. This is serious and still to this day has never received the proper care and attention it highly deserves. The Times suggests that the reason for the CPS dropping the case was because the defence she was to raise could potentially succeed and therefore would show gaps in the current legislation. However, one suggests that in fact it could quite possibly be that the British government either a) were concerned about the contents about what could be disclosed which in theory may implicate them into some acceptance of wrongdoing and/or b) the British authorities wished to maintain the status quo by not releasing Attorney Generals advice to the general public. Boris Johnson himself on the 16th day of September 2020 in the House of Commons during PM questions made the following comment which reinforces such a view "*Governments don't tend to publish Attorney Generals advice.*"

As most recent as the 21st day of July 2020 the Government's own Intelligence and Security Committee published a scathing report with a serious of recommendations, mainly relating to the threat hostile foreign state actors such as Russia could play in the future, therefore opining the real possibility of such an actor challenging the interests of the State. The Committee made distinctively clear its stance on the Official Secrets Acts in which they state "*Russia poses a tough intelligence challenge and our intelligence agencies must have the tools they need to tackle it. In particular, new legislation must*

be introduced to tackle foreign spies: The Official Secrets Act is not fit for purpose and while this goes unrectified the UK intelligence community's hands are tied[52].”

[52] Intelligence and Security Committee, 'The Russia Report' (HM Government 2020).

4. The Media Perspective

Naturally, journalists and members of the media will come across official data from time to time, possibly, without even realising it. The Official Secrets Acts[53] have over the years created some form of uncertainty for the modern journalist, especially with the current high-profile extradition hearing of Julian Assange looming, whom for the purposes of this dissertation, one argues could and should be recognised as a journalist.[54] While his case does not directly relate to breaches of the Official Secrets Acts[55], it sets an example as to how journalists could be treated by the British judicial system, should they dare to speak out, or publish classified data, regardless of whether such a disclosure has taken place inside or outside of its domestic territory and/or in the interests of the wider public at large. Every now and then we hear of leaks and many people have heard of the famous Wikileaks website[56] which describes "*Wikileaks specializes in the analysis and publication of large datasets of censored or otherwise restricted official materials involving war, spying and corruption*." In 2010, four years after its formation, the sites administrators (headed by Julian Assange himself) published a video from a US military helicopter showing the killing of civilians in Baghdad, Iraq. (*See Figure 1 below for an example exhibit from the website which was further published by the BBC, The Guardian and many other mainstream and non-mainstream outlets across the world*.) The footage shook the world, more so in that this exposed war crimes which until this point, no one knew of, as it was hidden by the

[53] Official Secrets Acts 1889-1989.

[54] Julian Assange has been awarded numerous national journalistic awards including the Amnesty International UK Media Awards which pays tribute to what they describe as "the best Human Rights journalism in the UK" and the Martha Gelhorn prize for journalism which awards journalism that challenges secrecy and mendacity in public affairs.

[55] Official Secrets Acts 1889-1989.

[56] 'Home' (*Wikileaks*, 2020) <https://wikileaks.org> accessed 17 September 2020.

authorities who had a duty in accordance with the American constitution to at the very least, investigate such atrocities. (*A transcript of the wording used by the military personnel prior to, during and after the footage is filed in Appendix 3*).

57

FIGURE 1 - Helicopter footage posted on Wikileaks

The full history of Mr Assange's activities is not for the consideration of this dissertation, however the current extradition proceedings which are being overseen by District Judge Vanessa Baraitser at the Central Criminal Court, in London are relevant in that the USA seek his extradition for disclosing various US secret intelligence, however what's more interesting is that the most controversial of all of Wikileaks footage, that of the US soldiers killing innocent civilians and press personnel is not part of its extradition request. Some argue that the reasons for this, is because they do not or cannot acknowledge its existence in such a formal setting of that in a British court in that they may therefore then automatically become liable for an array of crimes. The UK and USA have what is often referred to as a 'special relationship' and work together very closely on matters of security and intelligence, through its various reciprocal

57 'Wikileaks: Document Dumps That Shook the World' (*BBC News*, 2019) <https://www.bbc.co.uk/news/technology-47907890> accessed 17 September 2020.

agreements, including that of its 'Five Eyes' alliance. Will therefore Mr Assange receive a fair trial or a political one, only time will tell, and the proceedings are expected to conclude in a matter of weeks, so will likely provide some food for thought once any such judgment is made, regardless of its outcome.

The law relating to official secrecy can have serious consequences for journalists. From a media perspective, journalists generally have not been successfully prosecuted for many years.[58] The risk tends to relate to the protection of sources of information, such as that of whistleblowers who feel information should be made public. Another excellent example is that of the Grimsby Telegraph incident which happened in 2015, whereby an unnamed police source reported to the paper that early hour morning shifts were only manned within the local policing area in some cases by four officers. The local crime commissioner responded and denied the claim by stating that if any police officer was making such disclosures, they were in breach of the Official Secrets Act and therefore criminals. Dodd in his book for journalists suggests that The Times responded to this by saying the crime commissioners' comments were 'ridiculous' and it would appear the matter was left pretty much there. This very issue, a clear misinterpretation of the Act or confusion with the now repealed 1911 Act (s2) shows the complexity and lack of understanding when it comes to what is actually an official secret and what types of information are deemed secret.

The Secretary of State for the Home Department, Mr Robert Carr made a succinct statement[59] in the Commons on the 29th day of June 1973 in which he goes on to say

> *"It is a statement of the obvious, but one for which I make no apology, to say that the subject which we are discussing today is central to the whole machine of democracy. If the Government and we in this house as individual*

[58] Mike Dodd and Mark Hanna, *Mcnae's Essential Law For Journalists* (24th edn, Oxford University Press 2018).

[59] HC Deb 29 June 1973 vol 858 cc1885-973.

> *Members of Parliament are to have a proper relationship with the people of the country whom we represent and govern, the people must have the opportunity to be as well informed as possible, both about the policies which we are following and the reasons which have led us to pursue them"*

However, he then further on in his submissions goes on to suggest that

> *"The importance of the Official Secrets Act is of a somewhat different kind. In addition to the Government's clear responsibility to keep the country informed of their thinking and decisions, the government have another and entirely different responsibility towards the people – namely, the responsibility to ensure the security of the State, the privacy of the individual and the protection of our country's interests in international relationships. Thus, however much we wish for open government, however much we wish to take the people into our confidence, there are inevitably some aspects of government and administration which must be conducted with varying degrees of secrecy"*

There is clearly a case for secrecy within any countries State, but in the interests of justice and fairness it cannot be ok for a State to cover up illegality and/or blatantly ignore their responsibilities in accordance with international laws, values and norms. The British often pronounce that its values are based on freedom and the ability to say exactly what one want's in the best interests of a democratic society, yet it appears only if it's not something the government are too interested or concerned with. Another recent notable instance was that of the Extinction Rebellion movement[60] who blocked access to the paper printing manufacturers which prevented The Sun, Daily Telegraph, Daily Mail and Times from reaching newsstands across England and Wales. The

[60] 'Home - Extinction Rebellion UK' (*Extinction Rebellion UK*, 2020) <https://extinctionrebellion.uk> accessed 17 September 2020.

government's response was robust, and one would argue disproportionate to the actual risk being posed by the movement in which it suggested the movement could and should be classified as an organised crime gang. The Home Secretary Priti Patel described the group as "attacking the free press" however in contrast a former Counter-Terrorism National Coordinator Nick Ainsworth described the findings as spine chilling whereby he condemns such a move[61].

Another key consideration in relation to the media and what simply cannot be ignored is the role of the Defence and Security Media Advisory Notice System (DSMA). The DSMA exists of a Committee which is chaired by the Director General of Security Policy which is part of the Ministry of Defence and its membership consists of various government and media representatives. The process is an attempt to offer a voluntary system of co-operation whereby the media can seek informal advice before publishing anything which could related to the following areas which for the purposes of official secrecy legislation could be covered if a disclosure was to be made.

1. Military Operations, Plans and Capabilities
2. Nuclear and Non-Nuclear Weapon Systems and Equipment
3. Military Counter-Terrorist Forces, Special Forces and Intelligence Agency Operations, Activities and Communication Methods and Techniques
4. Physical Property and Assets
5. Personnel and their Families who work in Sensitive Positions.

Overall, it would appear that the system works well, but there is clearly scope for some concern that why would a free press choose to voluntarily self-censor. It is however accepted that having such a system can safeguard journalists and/or news agencies

[61] Emma Burnell, "'Spine Chilling": Former Counter-Terrorism Boss On Attempt To Reclassify Extinction Rebellion As Organised Crime Gang' (*Left Foot Forward,* 2020) <https://leftfootforward.org/2020/09/spine-chllining-says-former-counter-terrorism-national-coordinator-of-attempt-to-reclassify-extinction-rebellion-as-terrorist-or-organised-crime-gang/> accessed 16 September 2020.

where they are not sure whether a disclosure and/or other piece of information may be deemed damaging for the purposes of the Act.

5. THE CASE FOR REFORM

There have been various calls for reform over the years, with the first going as far back as 1972 in which the then Franks Committee reviewed *s2* of the 1911 Act[62] due to serious concerns raised by the media and the clear unhappiness of the courts. Some thirteen years later and the same echoes of concern were still being suggested in which a member of the judiciary expressed his clear dissatisfaction with *s2* in which *in obiter* he went on to suggest "*section 2 should be pensioned off and replaced with a measure that provides greater clarity*[63]" which one suggests further evidences that this particular section was in desperate need of reform in that it could potentially criminalise good intentioned people who it could be argued should be allowed to make disclosures in the public interest. Between the years of 1945 to 1971, approximately twenty-three prosecutions were sought by the Attorney Generals of the day in accordance with *s2* of the 1911 Act.[64] It is suggested that the case which sparked the Franks Committee[65] review was that of the unreported Sunday Telegraph case in 1971 whereby the paper published foreign office documents relating to the then government's policies on the Nigerian Civil War. The Committee[66] produced its final report in 1972 whereby it made a series of recommendations, in the main being that the law was clearly unsatisfactory and therefore *s1* should be replaced with an Espionage Act and *s2* with a new, less intrusive Official Information Act. One argues it's misfortunate that it only appeared to concern the honourable members when it was realised the Act prohibited them from

[62] Official Secrets Act 1911.

[63] Clive Ponting, The Right To Know: The Inside Story Of The Belgrano Affair (Sphere Books Ltd 1985).

[64] Official Secrets Act 1911.

[65] 'Franks Report, Volume I'.

[66] 'Franks Report, Volume I'.

engaging in certain conduct. Until that point, there did not appear to be much appetite if any to consider official secrecy law and policy at any great depth, as further evidenced by the governments response to the recommendations which was generally they accepted them, which in reality is in stark contrast to that of a statement made in the House of Commons by the then Home Secretary of State for the Home Department whereby he affirms

> *"I am bound to tell the House that we have some real doubts whether the committee has sufficiently taken account of the great damage which can be caused by disclosure of material which arises in the normal conduct of foreign affairs.*[67]*"*

In 2015 the Cabinet Office, on behalf of the government asked the Law Commission to review the effectiveness of the laws relating to the protection of official information and unauthorised disclosures.[68] The Commission commenced its work in February 2016 and published its first consultation overview in February 2017. This was extended for a further period to allow further submissions, in that the public, whistleblowers, and media representatives felt the initial time period allowed was not long enough to respond to such an extensive report. It appears from the initial recommendations that the Commission proposed repealing the 1911, 1920, 1939, and 1989 Acts, replacing them with new Acts and provisions which were more appropriate and proportionate for the current day, accepting it's language and interpretation would and should be somewhat very different now to that of 1911. There was also a suggestion of increasing the possible sentencing guidelines and structure to that of a much higher period than that currently allowed which sparked much controversy, in that some media organisations

[67] HC Deb 29 June 1973 vol 858 cc1885-973.

[68] 'Protection Of Official Data | Law Commission' (The Law Commission, 2020) <https://www.lawcom.gov.uk/project/protection-of-official-data/> accessed 16 September 2020.

interpreted it as an intrusion on their right to report freely and be able to uphold the principles of a free press. The Guardian went as far as to indicate that the initial proposals were a "threat to democracy.[69]" Overall, the response was negative, and it was clear the commission had a very difficult balancing exercise to make when it came to be reviewing this historic, draconian, and clearly outdated piece of legislation. The final report of the Law Commission was released in September 2020 and included a total of 33 recommendations. It appears that these have somewhat changed since their initial report in 2017 however that could be due to a change in commissioner.[70] The recommendations, in summary were

a) A new espionage statute which contains and is written in modern language and therefore would replace the Official Secrets Acts 1911,[71] 1920,[72] and 1939.[73]
b) A new statute to replace the 1911[74] Act and replace the word enemy with foreign power.
c) The replacement of the requirement to prove damage with an explicit fault test therefore crown servants being treated differently from the general public.
d) The allowance of a defendant to make a disclosure for the purposes of seeking legal advice, however requiring that such a lawyer should possess some form of additional security vetting.
e) A recommendation to parliament to consider increasing the maximum sentence, for breaches of *s1, s2, s3, s4, s5,* and *s6* of the 1989 Act.[75]

[69] The Guardian, 'The Guardian View On Official Secrets: New Proposals Threaten Democracy' (2017).

[70] The initial commissioner who was working on this area of reform was that of Professor David Ormerod QC. The final report was published by the then new commissioner who had been in post approximately one year, namely, Professor Penney Lewis.

[71] Official Secrets Act 1911.

[72] Official Secrets Act 1920.

[73] Official Secrets Act 1939.

[74] Official Secrets Act 1911.

[75] Official Secrets Act 1989.

f) Widening the territorial ambit of s1, s2, s3, and s4 of the 1989 Act so that a government contractor and/or other notified person whom makes a disclosure abroad, regardless of whether he or she is a British citizen, would constitute an offence.
g) The establishment of an independent, statutory commissioner with the sole purpose of receiving and investigating allegations of wrongdoing or illegality, whereby otherwise disclosing such would mean they are in breach of the 1989 Act. Furthermore, it recommends that such a commissioner should have the powers to compel those it is investigating to co-operate with its enquiries and investigations.
h) The creation of a public interest defence, whereby if it can be proven on the balance of probabilities that a breach of the 1989 Act was either a) in the public interest to make such a disclosure and/or b) the manner in which such a disclosure is made is deemed in the public interest.

One respectfully suggests that some of the recommendations made within the final report provide sound solutions to some of the key issues with the current legislation. For example, having a public interest defence would prove useful and reasonable to those who genuinely wish to make a disclosure in the public interest where they would otherwise be prevented from doing so in accordance with the current statutory framework. For example, the whistleblower Annie Machon[76] had attempted to bring to the attention of her MI5 superiors on numerous occasions the genuine and profound concerns she held, without much, if any response. This amendment would provide a safeguard for anyone in such a position, who had attempted to make the authorities

[76] Annie Machon, Spies, Lies And Whistleblowers: MI5, MI6 And The Shayler Affair (Book Guild Publishing Ltd 2005).

aware but were simply ignored. Machon has presented a series of lectures[77] in this area and makes the case that if the government, security agencies, and even private businesses, took their employees or representatives' concerns more seriously, often it would prevent the embarrassment and loss of trust which is often associated with such damaging disclosures. One suggests it's a valid point and is a theory that should be considered further. The recommendation as regards an independent, statutory commissioner would surely be welcomed by those who have a vested interest in the rule of law, independence of the security services and in an attempt to offer whistleblowers, what up until now they often raise as one of their key agitations – not being able to get any satisfactory response or independent consideration of their concerns. However, one proposes that not all is well. It surely cannot be right that the State is able to arrest someone for such serious offences, then tell them they can only have legal representation from an approved offering, of professionals whom have been vetted by the very services who are alleging the crime. In many cases, offences relating to official secrecy concern matters of national security and the interests of the state therefore will often have some link to one of the UK's security services, that being MI5[78], MI6[79], GCHQ[80] or NCSC[81]. This could be interpreted as nothing more than a serious infringement upon one's right to access independent legal advice, someone of their choosing who would, in any event, be regulated by their respective profession, whether

[77] Annie Machon, 'Various Lectures Relating To Whistleblowing And Her Experiences As An Ex MI5 Agent.' <https://www.youtube.com/results?search_query=annie+machon> accessed 16 September 2020.

[78] MI5 operates under the statutory framework of the Home Secretary, but it is not part of the Home Office. It is the UK's domestic counterintelligence and security agency.

[79] MI6 exists to protect the UK's interests from overseas threats

[80] GCHQ describes itself as a "world leading intelligence, cyber and security agency with a mission to keep the UK safe". In theory they act as spies and work in conjunction with foreign agencies, listening to telecommunications signals and infiltrating communications that are deemed in the British interests.

[81] The National Cyber Security Centre provides British cyber infrastructure with advice, guidance and support in an attempt to share sound information relating to keeping business, people and institutions safe. They also offer incident response to minimise harm to UK interests in relation to cyber security.

that be the Bar Standards Board for Barrister and the Solicitors Regulation Authority for Solicitors. Legal professionals as a matter of rule are bound by very strict terms of confidentiality and would in any event also be bound by the provisions of the Act not to disclose without lawful authority the information they receive. It cannot be acceptable to pick and choose whom and for what offences the rule of law applies to, nor in the interests of justice can it ever be fair, just, and reasonable to do so. This is certainly an area that requires much more exploration, however in that the recommendation is still contemporary there is no such debate or academic opinion on this very issue as of yet.

The Home Secretary in a speech to New Scotland Yard in May 2019 announced the government's intention of preparing a way for a new Espionage Bill in what they described as bringing modernised powers, providing security services the legal authority they need to tackle threats and the updating of the Official Secrets Acts to meet modern 21st century needs.[82] However, just five months later on behalf of her Government HM Queen Elizabeth II confirmed the plans of the newly formed Johnson Cabinet in which her speech goes on to dictate "We will *provide the security services and law enforcement agencies with the tools they need to disrupt Hostile State Activity".* Within the enhanced version of the Queen's speech, it confirms that

> *"The Law Commission have been commissioned by the Government to review the Official Secrets Acts. The Official Secrets Acts are the only pieces of UK legislation that currently exist to specifically address Hostile State Activity such as espionage, sabotage and subversion, other than the ports stop power we included in the Counter Terrorism and Border Security Act 2019. The government will reflect on their final recommendations when published.*[83]*"*

[82] Home Office, 'Home Secretary Speech On Keeping Our Country Safe' (2019).

[83] Prime Minister's Office, 'The Queens Speech' (Prime Minister's Office 2019).

It appears the government pre-anticipated by nearly a year what they were going to do, in that they indicated in 2019 they wished to enact a new Espionage Bill, why wait then for over a year for the Law Commission report, not surprisingly, who proposed the same enactment in any event. One asserts that the law of official secrecy is clearly in need of some reform and that while the recommendations are helpful as a starting point, it is respectfully reasoned that they do not go far enough and in fact now could impede a defendants chances of a fair trial even more so that the what the 1989 Act does.

6. CONCLUSION

The main goal of this dissertation was to determine whether the Official Secrets Acts as currently on the statute books are fit for purpose within twenty-first century modern Britain. It has identified through the statutes, the often-problematic nature of law relating to official secrecy and has shown through the case law the problems which can arise in a particular set of circumstances. These discussions, one respectfully submits have confirmed that the law as is clearly is not fit for purpose and in some cases has not been for many years. There is clear scope and one believes it is generally accepted across the board that there needs to be some safeguards, deterrent even for those who make disclosures with malicious intent or in an attempt to undermine one's government. It cannot however be acceptable for governments to cover up wrongdoing in the name of national security, which is clearly has done up until now.

Ramage describes the problem astutely well with the Official Secrets Acts[84] in eighteen short words whereby she goes on to suggest "*it is widely known that the Official Secrets Act is a discretionary statute with a significant political ingredient.*[85]"

[84] Official Secrets Acts 1889-1989.

[85] Sally Ramage, 'The Little Red School Book and Other Harmful Publications' (2008) 186 Criminal Lawyer.

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Prevention of Crimes Act 1871

Prison Act 1952

Prosecution of Offences Act 1879

Public Interest Disclosure Act 1998

Security Service Act 1989

Supreme Court Act 1981

Treason Act 1351

Treason Felony Act 1848

8. APPENDICES

APPENDIX 1 OFFICIAL SECRETS ACT DECLARATION (1987) 41

APPENDIX 2 OFFICIAL SECRETS ACT DECLARATION (2020) 42

APPENDIX 3 'COLLATERAL MURDER' TRANSCRIPT 45

APPENDIX 1 OFFICIAL SECRETS ACT DECLARATION (1987)

Form E.74

OFFICIAL SECRETS ACT

Declaration: To be signed by members of Government Departments on appointment and, where desirable, by non-civil servants on first being given access to Government information.

My attention has been drawn to the provisions of the Official Secrets Act set out on the back of this document and I am fully aware of the serious consequences which may follow any breach of those provisions.

I understand that the sections of the Official Secrets Act set out on the back of this document cover material published in a speech, lecture, or radio or television broadcast, or in the Press or in book form. I am aware that I should not divulge any information gained by me as a result of my appointment to any unauthorized person, either orally or in writing, without the previous official sanction in writing of the Department appointing me, to which written application should be made and two copies of the proposed publication be forwarded.

I understand also that I am liable to be prosecuted if I publish without official sanction any information I may acquire in the course of my tenure of an official appointment (unless it has already officially been made public) or retain without official sanction any sketch, plan, model, article, note or official documents which are no longer needed for my official duties, and that these provisions apply not only during the period of my appointment but also after my appointment has ceased. I also understand that I must surrender any documents, etc., referred to in Section 2(1) of the Act if I am transferred from one post to another, save such as have been issued to me for my personal retention.

APPENDIX 2 OFFICIAL SECRETS ACT DECLARATION (2020)

FROM: Name Department Address Date of Notification Date	TO: Name Post: Post Name Post Designated No: No

OFFICIAL SECRETS ACT 1989: NOTIFICATION NOTICE

I am writing on the authority of the Secretary of State to notify you that you remain subject to the provisions of section 1(1) of the Official Secrets Act 1989.

What Notification Means

1. Under section 1(1) of the Official Secrets Act 1989, any disclosure about security or intelligence by a member or a former member of the security and intelligence services without lawful authority constitutes a criminal offence. This also applies to any person who is not a member of the security and intelligence services but who is notified by a Minister that he or she is subject to section 1(1) of the Act.
2. The individuals subject to notification are those whose work, in the opinion of a minister, is or includes work connected with the security and intelligence services and is of such a nature that the interests of national security require that they should be subject to section 1(1) of the Act.
3. The Secretary of State has decided that the work of the post described at the head of this Notice continues to fall within this category and that you, as the post holder, should continue to be subject to notification under the Act.

How Long Will The Notification Last?

4. As with the original notification, this notification will remain in force for a further period of five years, unless revoked, in which case you will be informed in writing.

5. If, after a further five years, the nature of your work is such as to continue to require your notification, the notification will be renewed for a further five years.
6. Should you change post, this notification will remain in force, and you will continue to be subject to section 1(1) of the Act, unless informed otherwise.

How This Affects You

7. You are guilty of a criminal offence under section1(1) of the Official Secrets Act 1989 if, without lawful authority, you disclose any information, document or other article relating to security and intelligence which has been in your possession in the course of your work. This includes making any statement, which purports to be a disclosure of information relating to security and intelligence which has been in your possession in the course of your work. This includes making any statement which purports to be a disclosure of information relating to security or intelligence or is intended to be taken by those to whom it is addresses as being such a disclosure. The penalty on conviction for such an offence could be imprisonment for up to two years, or a fine, or both.
8. If your notification expires or is revoked, you will still commit an offence under section 1(1) of the Act if you disclose or purport to disclose any information, document, or other article relating to security or intelligence which has been in your possession in the course of your work while this or any other previous notification was in force.

OFFICIAL NOTIFICATION

This letter constitutes a renewal of the notification notice previously served under section 1(6) of the Official Secrets Act 1989 on you on Date that you are subject to section 1(1) of the Act. This is in accordance with section 1(7) of the Official Secrets Act 1989. You will have received two copies. Please sign the acknowledgement below and return this notice to me; you may keep the copy for reference.

Name Date

Signed on behalf of the Secretary of State

ACKNOWLEDGEMENT

I acknowledge that the notification previously served on me under section 1(6) of the Official Secrets Act 1989 has been renewed in accordance with section 1(7) of the Act, and that I remain subject to section 1(1) of the Official Secrets Act 1989.

Signed Date

Surname

Forenames

APPENDIX 3 'COLLATERAL MURDER' TRANSCRIPT

00:03	Okay I got it.
00:05	Last conversation Hotel Two-Six.
00:09	Roger Hotel Two-Six [Apache helicopter 1], uh, [this is] Victor Charlie Alpha. Look, do you want your Hotel Two-Two two el-
00:14	I got a black vehicle under target. It's arriving right to the north of the mosque.
00:17	Yeah, I would like that. Over.
00:21	Moving south by the mosque dome. Down that road.
00:27	Okay we got a target fifteen coming at you. It's a guy with a weapon.
00:32	Roger [acknowledged].
00:39	There's a...
00:42	There's about, ah, four or five...
00:44	Bushmaster Six [ground control] copy [i hear you] One-Six.
00:48	...this location and there's more that keep walking by and one of them has a weapon.
00:52	Roger received target fifteen.
00:55	K.
00:57	See all those people standing down there.
01:06	Stay firm. And open the courtyard.
01:09	Yeah roger. I just estimate there's probably about twenty of them.
01:13	There's one, yeah.
01:15	Oh yeah.

01:18	I don't know if that's a...
01:19	Hey Bushmaster element [ground forces control], copy on the one-six.
01:21	Thats a weapon.
01:22	Yeah.
01:23	Hotel Two-Six; Crazy Horse One-Eight [second Apache helicopter].
01:29	Copy on the one-six, Bushmaster Six-Romeo. Roger.
01:32	Fucking prick.
01:33	Hotel Two-Six this is Crazy Horse One-Eight [communication between chopper 1 and chopper 2]. Have individuals with weapons.
01:41	Yup. He's got a weapon too.
01:43	Hotel Two-Six; Crazy Horse One-Eight. Have five to six individuals with AK47s [automatic rifles]. Request permission to engage [shoot].
01:51	Roger that. Uh, we have no personnel east of our position. So, uh, you are free to engage. Over.
02:00	All right, we'll be engaging.
02:02	Roger, go ahead.
02:03	I'm gonna... I cant get 'em now because they're behind that building.
02:09	Um, hey Bushmaster element...
02:10	He's got an RPG [Rocket Propelled Grenade]?
02:11	All right, we got a guy with an RPG.
02:13	I'm gonna fire.
02:14	Okay.
02:15	No hold on. Lets come around. Behind buildings right now from our point of view. ... Okay, we're gonna come around.

02:19	Hotel Two-Six; have eyes on individual with RPG. Getting ready to fire. We won't...
02:23	Yeah, we had a guy shoot---and now he's behind the building.
02:26	God damn it.
02:28	Uh, negative, he was, uh, right in front of the Brad [Bradley Fighting Vehicle; an tracked Armored Personal Carrier that looks like a tank]. Uh, 'bout, there, one o'clock. [direction/orientation]
02:34	Haven't seen anything since then.
02:36	Just fuckin', once you get on 'em just open 'em up.
02:38	All right.
02:40	I see your element, uh, got about four Humvees [Armored cars], uh, out along...
02:43	You're clear.
02:44	All right, firing.
02:47	Let me know when you've got them.
02:49	Lets shoot.
02:50	Light 'em all up.
02:52	Come on, fire!
02:57	Keep shoot, keep shoot. [keep shooting]
02:59	keep shoot.
03:02	keep shoot.
03:05	Hotel.. Bushmaster Two-Six, Bushmaster Two-Six, we need to move, time now!
03:10	All right, we just engaged all eight individuals.
03:12	Yeah, we see two birds [helicopters] and we're still fire [not firing].

03:14	Roger.
03:15	I got 'em.
03:16	Two-six, this is Two-Six, we're mobile.
03:19	Oops, I'm sorry what was going on?
03:20	God damn it, Kyle.
03:23	All right, hahaha, I hit [shot] 'em...
03:28	Uh, you're clear.
03:30	All right, I'm just trying to find targets again.
03:38	Bushmaster Six, this is Bushmaster Two-Six.
03:40	Got a bunch of bodies layin' there.
03:42	All right, we got about, uh, eight individuals.
03:46	Yeah, we got one guy crawling around down there, but, uh, you know, we got, definitely got something.
03:51	We're shooting some more.
03:52	Roger.
03:56	Hey, you shoot, I'll talk.
03:57	Hotel Two-Six; Crazyhorse One-Eight.
04:01	Crazyhorse One-Eight; this is Hotel Two-Six. Over.
04:03	Roger. Currently engaging [fighting/shooting at] approximately eight individuals, uh KIA [Killed In Action], uh RPGs, and AK-47s.
04:12	Hotel Two-Six, you need to move to that location once Crazyhorse is done and get pictures. Over.
04:20	Six beacon gaia.
04:24	Sergeant Twenty is the location.

04:28	Hotel Two-Six; Crazyhorse One-Eight.
04:31	Oh, yeah, look at those dead bastards.
04:36	Nice.
04:37	Two-Six; Crazyhorse One-Eight.
04:44	Nice.
04:47	Good shoot.
04:48	Thank you.
04:53	Hotel Two-Six.
04:55	Hotel Two-Six; Crazyhorse One-Eight.
05:03	Crazyhorse One-Eight; Bushmaster Seven. Go ahead.
05:06	Bushmaster Seven; Crazyhorse One-Eight. Uh, location of bodies, Mike Bravo five-four-five-eight eight-six-one-seven [military map grid reference].
05:15	Hey, good on the uh...
05:17	Five-four-five-eight eight-six-one-seven [map grid reference]. Over.
05:21	This is Crazyhorse One-Eight, that's a good copy. They're on a street in front of an open, uh, courtyard with a bunch of blue uh trucks, bunch of vehicles in the courtyard.
05:30	There's one guy moving down there but he's uh, he's wounded.
05:35	All right, we'll let 'em know so they can hurry up and get over here.
05:40	One-Eight, we also have one individual, uh, appears to be wounded trying to crawl away.
05:49	Roger, we're gonna move down there.
05:51	Roger, we'll cease fire.
05:54	Yeah, we won't shoot anymore.

06:01	He's getting up.
06:02	Maybe he has a weapon down in his hand?
06:04	No, I haven't seen one yet.
06:07	I see you guys got that guy crawling right now on that curb.
06:08	Yeah, I got him. I put two rounds [30mm cannon shells] near him, and you guys were shooting over there too, so uh we'll see.
06:14	Yeah, roger that.
06:16	Bushmaster Thirty-Six Element; this is uh Hotel Two-Seven over.
06:21	Hotel Two-Seven; Bushmaster Seven go ahead.
06:24	Roger I'm just trying to make sure you guys have my turf [area], over.
06:31	Roger we got your turf.
06:33	Come on, buddy.
06:38	All you gotta do is pick up a weapon.
06:44	Crazyhorse this is Bushmaster Five, Bushmaster Four break. We are right below you right time now can you walk us onto that location over.
06:54	This is Two-Six roger. I'll pop flares [drop flares]. We also have one individual moving. We're looking for weapons. If we see a weapon, we're gonna engage.
07:07	Yeah Bushmaster, we have a van that's approaching and picking up the bodies.
07:14	Where's that van at?
07:15	Right down there by the bodies.
07:16	Okay, yeah.
07:18	Bushmaster; Crazyhorse. We have individuals going to the scene, looks like possibly uh picking up bodies and weapons.

07:25	Let me engage.
07:28	Can I shoot?
07:31	Roger. Break. Uh Crazyhorse One-Eight request permission to uh engage.
07:36	Picking up the wounded?
07:38	Yeah, we're trying to get permission to engage.
07:41	Come on, let us shoot!
07:44	Bushmaster; Crazyhorse One-Eight.
07:49	They're taking him.
07:51	Bushmaster; Crazyhorse One-Eight.
07:56	This is Bushmaster Seven, go ahead.
07:59	Roger. We have a black SUV-uh Bongo truck [van] picking up the bodies. Request permission to engage.
08:02	Fuck.
08:06	This is Bushmaster Seven, roger. This is Bushmaster Seven, roger. Engage.
08:12	One-Eight, engage.
08:12	Clear.
08:13	Come on!
08:17	Clear.
08:20	Clear.
08:21	We're engaging.
08:26	Coming around. Clear.
08:27	Roger. Trying to uh...
08:32	Clear.

08:35	I hear 'em co.. I lost 'em in the dust.
08:36	I got 'em.
08:41	I'm firing.
08:42	This is Bushmaster Forty got any BDA [Battle Damage Assessment] on that truck. Over.
08:44	You're clear.
08:47	This is ah Crazyhorse. Stand by.
08:47	I can't shoot for some reason.
08:49	Go ahead.
08:50	I think the van's disabled.
08:53	Go ahead and shoot it.
08:54	I got an azimuth limit for some reason [gunner moved gunsight too far]
09:00	Go left.
09:03	Clear left.
09:15	All right, Bushmaster Crazyhorse One-Eight.
09:20	A vehicle appears to be disabled.
09:22	There were approximately four to five individuals in vehicle moving bodies.
09:28	Your lead Bradley should take the next right.
09:31	That's cruising east down the road.
09:34	No more shooting.
09:38	Crazyhorse; this is Bushmaster Four. We're moving a dismounted element [troops] straight south through the Bradleys [tanks].

09:44	I have your Elem- uh, Bradley element turning south down the road where the engagements were.
09:53	Last call on station's uh Bradley element say again.
09:56	Roger this is Crazyhorse.
09:58	Your lead Bradley just turned south down the road where all the engagements [shooting] happened.
10:03	Should have a van in the middle of the road with about twelve to fifteen bodies.
10:11	Oh yeah, look at that. Right through the windshield!
10:14	Ha ha!
10:16	All right. There were uh approximately four to five individuals in that truck, so I'm counting about twelve to fifteen.
10:24	I would say that's a fairly accurate assessment so far.
10:27	Roger that.
10:29	I want to just be advised Six, Bushmaster Six are getting mounted up right now.
10:35	Okay, roger. Hey, we can't flex down that road towards that, uh, where Crazyhorse engaged.
10:43	So, uh, I don't know if you want us to do so or stay put. Over.
10:46	Why can't they go down there?
10:56	I think we whacked [killed] 'em all.
10:58	That's right, good.
10:59	This is Hotel Two-Six.
11:03	Hey you got my dismounted element [troops] right there over to your left.
11:06	Roger, I see 'em.

11:11	Hey yeah, roger, be advised, there were some guys popping out with AKs behind that dirt pile break.
11:19	We also took some RPGs off, uh, earlier, so just uh make sure your men keep your eyes open.
11:26	Roger.
11:27	And, uh, Bushmaster ahead are, uh, Hotel Two-Six; Crazyhorse One-Eight.
11:33	Crazyhorse One-Eight; this is Hotel Two-Six.
11:35	Yeah Two-Six; Crazyhorse One-Eight.
11:37	Uh, location I have about twelve to fifteen dead bodies.
11:42	Uh, where else are we taking fire from?
11:48	Currently we're not being engaged, ah, but just south of that location. Break.
11:55	You should see dismounted elements with Humvees [armored cars] moving to the east, over.
12:01	This is Crazyhorse One-Eight; we have elements in sight.
12:05	Bushmaster Three-Six.
12:07	I'm gonna get down a little lower.
12:09	All right.
12:10	I'm gonna come down a little lower and take a quick gander.
12:13	Roger that.
12:14	Six; this is four. We're headed to the area where Crazyhorse engaged.
12:26	Bushmaster Six; this is Hotel Two-Six.
12:28	Request to go to the south to our original BP so if you flushed them to the south we will be there to uh intercept over.

12:39	Hey this is Bushmaster Seven; we're coming up on B... on the ass end of the Brads [tanks].
12:54	Hey uh, Bushmaster Element; this is Copperhead One-Six break.
13:00	We're moving in the vicinity of the engagement area and looks like we've got some slight movement from ah, the ah van that was engaged.
13:06	Looks like a kid. Over.
13:11	This is Bushmaster Seven, roger. Uh, we're about a hundred meters behind you.
13:16	Got that big pile, to the right?
13:18	Roger, you gonna pull in here? Do you want me to push stuff so you can, uh, get clear of it?
13:21	Right on the corner?
13:22	What's that?
13:23	Got that big pile of bodies to the right, on the corner?
13:24	Yeah, right here.
13:25	We got a dismounted infantry and vehicles, over.
13:30	Again, roger.
13:31	And clear.
13:48	There's the Bradley right there.
13:51	Got 'em.
14:00	Hotel two-six; are you uh at this grid over?
14:05	Yeah I wanted to get you around so didn't you just get that one dude to scare them all away. It worked out pretty good.
14:11	I didn't want those fuckers to run away and scatter.
14:12	Yeah.

14:15	Bushmaster Six; Hotel Two-Six. Roger, we linked up with our two element they are all mounted up in our trucks break.
14:23	We moved south so that we could ah possibly intercept personnel being flushed south. So we are vicinity Fifth Street.
14:30	And ah please line Gadins. Over.
14:37	Bring the trucks in, cordon this area off.
14:39	Can we move the Bradley forward so we can bring trucks in and cordon off this area.
14:44	If the Bradleys could take the south cordon, that could help out a lot.
14:53	Bushmaster or element. Which Element called in Crazyhorse to engage the eight-elem- eight-men team on top of a roof.
15:02	Bushmaster Six; this is Hotel Two-Six. Uh, I believe that was me.
15:07	They uh had AK-47s and were to our east, so, where we were taking small arms fire. Over.
15:20	Hotel Crazyhorse One-Eight.
15:26	Crazyhorse One-Eight; this is Hotel Two-Six.
15:28	Yeah Two-Six. One-Eight I just also wanted to make sure you knew that we had a guy with an RPG cropping round the corner getting ready to fire on your location.
15:36	That's why we ah, requested permission to engage.
15:40	Ok, roger that. Tango mike.
15:46	Hotel Two-Six; do you understand me, over?
15:51	I did not copy last, uh, you got stepped on. Say again please?
16:00	They cordoned off the building that the helicopters killed the personnel on.

16:04	Don't go anywhere else we need to cordon off that building so we can get on top of the roof and SSC the building. Over.
16:13	Hotel Two-Six; Crazyhorse One-Eight.
16:16	This is Hotel Two-Six.
16:19	Hey, whoever was talking about rooftops, know that all the personnel we engaged were ground level. I say again ground level.
16:27	Roger I copy ground level. Over.
16:30	One-Eight roger.
16:33	Can I get a grid to that one more time please?
16:36	Target twenty.
16:36	Roger.
16:40	You want me to take over talking to them?
16:42	S'alright.
16:46	Seven-Six Romeo Over.
16:49	Roger, I've got uh eleven Iraqi KIAs [Killed In Action]. One small child wounded. Over.
16:57	Roger. Ah damn. Oh well.
17:04	Roger, we need, we need a uh to evac [evacuate] this child. Ah, she's got a uh, she's got a wound to the belly.
17:10	I can't do anything here. She needs to get evaced. Over.
17:18	Bushmaster Seven, Bushmaster Seven; this is Bushmaster Six Romeo.
17:20	We need your location over.
17:25	Roger, we're at the location where Crazyhorse engaged the RPG fire break.
17:37	Grid five-four-five-eight.

17:46	Well it's their fault for bringing their kids into a battle.
17:48	That's right.
17:56	Got uh, eleven.
18:01	Yeah uh, roger. We're monitoring [observing].
18:02	Sorry.
18:04	No problem.
18:07	Correction eight-six-one-six.
18:16	Looking for more individuals-south.
18:18	Bushmaster Six-Bushmaster Seven.
18:29	I think they just drove over a body.
18:31	Hey hey!
18:32	Yeah!
18:37	Maybe it was just a visual illusion, but it looked like it.
18:41	Well, they're dead, so.
18:44	Bushmaster Six; Hotel Two-Six over.
18:56	Six; this is Four. I got one individual looks like he's got an RPG round laying underneath him. Break.
19:05	Probably like to get...
19:10	Look at that.
19:12	Bushmaster Six; Hotel Two-Six over.
19:29	Bushmaster Six; Romeo Hotel Two-Six over.
19:44	Bushmaster Six; Hotel Two-Six over.
19:56	Hotel Two-Six; Bushmaster Seven colocated with Six.

20:08	Hotel Two-Six; Bushmaster Seven.
20:10	Bushmaster Seven; Hotel Two-Six over.
20:14	Roger, we got a little girl who needs to be evaced. What's your location over?
20:22	On route Gadins, I am all the way to the south. So I am Gadins and Fifth Street.
20:28	I say again Gadins and Fifth Street, over.
20:40	Bushmaster Seven; Hotel Two-Six. Do you want us to push to your location?
20:55	Hey, uh, I need to get the Brads to drop rads I got a wounded little girl we need to take her off the maya.
21:04	Bushmaster Seven; Hotel Two-Six. Do you want us to move to your location over?
21:30	Bushmaster Six; Hotel Two-Six over.
21:34	Hotel Two-Six; this is Bushmaster Seven. Roger, come to our location.
21:39	Okay, roger, we're coming up north on Gadins and then we will push east to your location.
22:06	Bushmaster elements be advised we have friendlies coming from the south to your location. Over.
22:13	All right, got 'em moving up from the south.
22:35	Bushmaster elements be advised we are coming up from the east.
23:49	Hey One-Two; follow me over. I'm going to try and get out of here as quickly as possible.
24:10	You guys all right back there?
24:13	Yeah, we're with you.
24:35	Lotta guys down there.

24:37	Oh yeah.
24:37	Came out of the woodwork.
24:38	This is Operation, ah, Operation Secure.
25:16	Yeah we have fifty rounds left.
25:17	Yep.
25:19	Two-Six; Six Romeo over.
25:21	Two-Six; Romeo over.
25:23	Hey roger, what's your current location over?
25:47	Six; speak it's Romeo.
25:50	Three-Six Romeo; Six Romeo over.
25:52	Roger, at the six once it's back on this guy.
25:56	Lost him.
26:00	What's he got for us?
26:01	Stand by.
26:06	Hotel Two-Six; Crazyhorse One-Eight.
26:21	Hey, did you got action on that target yet over?
26:25	Speak to Charlie roger.
26:32	Hotel Two-Six; Crazyhorse One-Eight.
26:55	Bushmaster Six; Crazyhorse One-Eight.
26:59	Roger, you have traffic over.
27:02	Roger. Uh, just wondering if you had anything else you wanted us to drive on?
27:08	Yeah roger keep on, ah, for the time being over.

27:11	Six calls Six Romeo. Can you tell battalion that two civilian children casualties are coming back to SMI in the Bradley over.
27:26	Six calls Six Romeo.
27:29	Bushmaster Six Copper White Six.
27:32	Copperhead White Six; this is Bushmaster Six Romeo over.
27:36	Roger, that's a negative on the evac of the two, ah, civilian, ah, kids to, ah, rusty they're going to have the IPs [Iraqi Police] link up. They can put us over here. Break. IPs will take them up to a local hospital over.
27:50	Copy over.
27:54	One six oh.
28:08	... they're all going to.
28:10	Say again?
28:12	Where all those dismounts [infantry] are going to?
28:18	Going into this hous-. Sorry
29:29	Three Six, Three Six; Bushmaster Six Romeo over.
29:37	Six Romeo, Six Romeo.
29:39	Roger, Bushmaster Seven wants an up on all personnel in your battalion over.
29:44	Roger.
30:08	...friendlies [US troops] on the roof.
30:10	Crazyhorse One-Eight; this is Bushmaster Four over.
30:12	Bushmaster Four; this is Crazyhorse One-Eight.
30:15	Roger, I can ah hear small arms fire from your engagement area at two zero zero zero ah about three hundred meters from that objective over.

30:27	Crazyhorse; from what I understand small arms fire at two zero zero zero degrees about two hundred meters.
30:39	Just to the southwest.
30:41	Yup.
30:49	Right about where we engaged.
30:51	Yeah, One of them with that RPG or whatever.
30:55	He's got a weapon. Got an RK--AK 47.
30:58	Hotel Two-Six; Crazyhorse One-Eight.
31:02	Gonna lose him.
31:03	Crazyhorse One-Eight this is Hotel Two-Six over.
31:08	Roger, have another individual with a weapon.
31:10	Dammit, they're in the same building.
31:12	Hey roger that, just make sure that ah, you're firing from west to east over.
31:16	Just went in the building.
31:18	Crazyhorse Three and Four will be on their way.
31:21	The individual walked into the building previously past grid [map reference]. So there's at least six individuals in that building with weapons.
31:30	We can put a missile in it.
31:31	If you'd like, ah, Crazyhorse One-Eight could put a missile in that building.
31:46	It's a triangle building. Appears to be ah, abandoned.
31:51	Yeah, looks like it's under construction, abandoned.
31:52	Appears to be abandoned, under construction.
31:56	Uh, like I said, six individuals walked in there from our previous engagement.

32:01	Crazyhorse One-Eight; this is Bushmaster Six Romeo. If you've PIDed [Positively IDentified] the individuals in the building with weapons, go ahead and engage the building over.
32:08	Crazyhorse One-Eight; will be coming up north to south engaging with Hellfire [missiles].
32:13	All right, I'm going to do manual.
32:17	All right, we've been cleared to engage with...
32:18	This is Bushmaster Six Romeo. Crazyhorse One Eight is going to be engaging north to south with Hellfire missiles over.
32:24	This is Hotel Two-Six. Roger.
32:26	All right, you ready?
32:27	No, I'm trying to get over to the November [target]. Trying to find the fucking...
32:33	This is Bushmaster Six. Has that RPG round been extended already or is it still live, over.
32:38	Looks live to me.
32:40	Let me know when you're going to fire.
32:44	All right, I'm fucking having a brain fart. Where's the man [manual] advancement?
32:48	You got one on the clutch on the bottom left on your left door.
32:54	Roger let me stand by.
32:57	Got it?
32:59	No.
33:03	All right.
33:09	Let me just put a kilo [Hellfire missile] in there.

33:12	Ok.
33:15	Got it?
33:21	Put a kilo in?
33:22	All right, let me get back.
33:26	I'm gonna come around, get some more distance.
33:27	Roger that, you're clear.
33:33	Got more individuals in there.
33:36	You wanna hit from north to south or you wanna go from west to east? I don't wanna fire with the friendlies [US forces] right there, you know.
33:41	Yeah, go north to south.
33:53	Right, come around, right.
33:56	I'm just gonna put one or two in, if they want any more.
34:09	Right.
34:12	Found the missile.
34:15	Roger, I'll get you in this straight.
34:16	You're clear.
34:17	I'm firing.
34:26	Target hit.
34:28	It was a missile.
34:29	Left.
34:32	You're clear. I'm above you.
34:36	Crazyhorse One-Eight; was that explosion you engaging over?
34:38	Crazyhorse One Eight, roger. Engaging building with one hellfire.

34:46	Let's come around and we'll clear the smoke. We'll fire one more.
34:50	Hey uh, we're going to wait for the smoke to clear.
34:52	Yes Crazyhorse One Eight now. We're going to put one more missile into the building.
34:57	Yeah, did it ah, go in the building? I see the wall knocked out of the way.
34:59	Yeah, it went in.
35:01	Bushmaster Six Romeo; this is Hotel Two-Six. Yeah roger, that was Crazyhorse engaging with one Hellfire over.
35:10	Yeah roger, I got a November [target] if you want.
35:12	Fire away.
35:13	You want us to fire?
35:18	You ready?
35:19	Yep.
35:20	Bushmaster Six Romeo. They are going to engage ah, with one more Hellfire in that building.
35:24	Uh shit, why I do I have AP flashing on there? [warning on helicopter display]
35:47	We're not even going to watch this fucking shit?
35:49	Till next one. It won't come around, I need a little more distance.
35:53	Still want me to shoot?
35:57	You guys, following hot.
35:59	Roger.
36:13	You are clear.
36:14	Roger.

36:16	You going to bring up the missile?
36:18	Roger.
36:19	And firing.
36:20	Come down? There you go.
36:23	Fire.
36:24	All right.
36:28	I've got, ah BACKSCATTER [warning on helicopter display].
36:30	All right, come around.
36:32	Roger.
36:34	Coming around left, backscatter.
36:49	Firing.
36:53	There it goes! Look at that bitch go!
36:56	Patoosh!
37:03	Ah, sweet.
37:07	Need a little more room.
37:09	Nice missile.
37:11	Does it look good?
37:12	Sweet!
37:16	Uh, you ready?
37:18	Roger.
37:30	There's a lot of dust.
37:36	Crazyhorse One-Eight; this is Hotel Two-Six. Was there a BDA [Battle Damage Assessment]?

37:40	This is Crazyhorse One-Eight. Stand by, engaging with another Hellfire.
37:43	All right.
37:45	You're clear.
37:47	Lemme know when I'm clear.
37:50	Roger that.
37:59	He wasn't.
38:02	Hotel Two-Six; Crazyhorse One-Eight.
38:07	Crazyhorse One-Eight.
38:09	Roger, building destroyed. Engaged with three hellfire missiles.